

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In Re:</b>  <b>W.R. GRACE &amp; CO., et al.,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING  
FEE APPLICATION OF PACHULSKI STANG ZIEHL & JONES, LLP  
FOR THE TWENTY-EIGHTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Twenty-Eighth Interim Fee Application of Pachulski Stang Ziehl & Jones, LLP (the "Application").

**BACKGROUND**

1. Pachulski Stang Ziehl & Jones, LLP ("Pachulski"), was retained as counsel to the Debtors. In the Application, Pachulski seeks approval of fees totaling \$166,477.50 and expenses totaling \$107,272.88 for its services from January 1, 2008 through March 31, 2008 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2008, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330,

Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Pachulski, and received a response from Pachulski, portions of which response are quoted herein.

### **DISCUSSION**

3. In our initial report, we noted that Timekeepers MLO and CAK, billing at hourly rates of \$190.00 and \$185.00, respectively, spent 8.60 hours for \$1,628.50 in fees on work which appeared to be filing. On the issue of adjusting rates downward, we find persuasive the opinion expressed by the Honorable Judith K. Fitzgerald in *In re USG Corporation*, Case No. 01-2094 (JKF), Transcript of Proceedings, August 29, 2005, pp. 49-52, wherein the Court opined that \$160.00 per hour for file maintenance, even if performed electronically, was too high, and that \$60.00 to \$100.00 per hour for this service was more appropriate.<sup>1</sup> We have been consistent in recommending that filing be billed at no more than \$80.00 per hour. Thus, we asked Pachulski to explain why this time should not be compensated at a reduced hourly rate.<sup>2</sup> Pachulski responded as follows:

As you noted in your initial report, similar time entries were questioned for the same timekeepers for the 27th period. The descriptions these time keepers were using

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<sup>1</sup>Nevertheless, the Court agreed to allow the applicant to present evidence in support of its \$160.00 hourly rate at a later date. *See* Transcript, *supra*, at p. 52.

<sup>2</sup>We inquired of Pachulski concerning this issue in our initial report for the Twenty-Seventh Interim Period and were provided the following response:

These time entries actually involve more duties than just organizing documents to a file. It also includes: review daily filing of pleadings and verify service regarding same, check pleadings for critical dates or deadlines, and maintain shadow files regarding fee applications and CNOs in order to track dates for filing CNOs. The description is an abbreviated version of what duties I am actually completing.

really did not correspond to what they were doing. It's the same issue on the 28th. MLO is a paralegal that works on the case and her time is spent reviewing, revising and finalizing pleadings and documents for filing with the Court and service on appropriate parties. CAK is a paralegal that works primarily on our fee applications. She does drafting, review and editing of the bills and fee applications. I have worked with both individuals to more accurately record their time and I think the problem should clear up going forward.

We believe the time is appropriately billed at the rates we charged.


We understand from the response that Timekeeper MLO's time entries for "organize documents to file" refer to organization of documents for filing with the court—not the office's internal files. Thus, we accept Pachulski's response with respect to Timekeeper MLO's time entries. However, the response does not establish to our satisfaction that Timekeeper CAK's time entries for "maintain document control" were for fee application preparation. Thus, we recommend Timekeeper CAK's time be reduced to \$80.00 per hour, for a reduction of \$115.50 in fees.

### **CONCLUSION**

4. Thus, we recommend approval of \$166,362.00 in fees (\$166,477.50 minus \$115.50) and \$107,272.88 in expenses for Pachulski's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

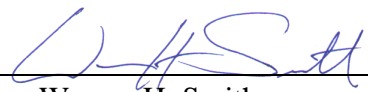
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 15<sup>th</sup> day of September, 2008.

  
Warren H. Smith

## **SERVICE LIST**

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